

HOUSE BILL NO. 768

INTRODUCED BY D. GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW RELATED TO OSTENSIBLE AGENCY; AND AMENDING SECTION 28-10-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 28-10-103, MCA, is amended to read:

"28-10-103. Actual versus ostensible agency -- limitation. (1) An agency is either actual or ostensible.

An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be the principal's agent when that person is not really employed by the principal.

(2) Except as provided in subsection (3), for purposes of a malpractice claim, as defined in 27-6-103, liability may not be imposed on a health care provider, as defined in 27-6-103, for an act or omission by a person or entity alleged to have been an ostensible agent of the health care provider at the time that the act or omission occurred.

(3) ~~(a)~~ Subsection (2) is not applicable unless the health care provider has, by policy or practice, ensured that those persons providing independent professional services have insurance of a type and in the amount required by the rules and regulations of the medical staff, by the medical staff bylaws, or by other similar health care facility rules or regulations. THE INSURANCE MUST PROVIDE COVERAGE FOR THE LENGTH OF TIME PROVIDED FOR IN 27-2-205. THE INSURANCE PROVIDED FOR IN THIS SUBSECTION MUST BE IN EFFECT FOR THE PERIOD OF TIME DURING WHICH A MEDICAL MALPRACTICE ACTION MUST BE BROUGHT AS PROVIDED IN 27-2-205.

~~———— (b) Subsection (2) is not applicable if the health care provider's insurance does not provide coverage for the length of time provided for in 27-2-205."~~

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